

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

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4 In the Matter of:

5 LEHMAN BROTHERS HOLDINGS, INC., et al., Main Case No.

6 Debtors. 08-13555-jmp

7 - - - - -x

8 In the Matter of:

9 LEHMAN BROTHERS, INC., SIPA Case No.

10 Debtor. 08-01420-jmp

11 - - - - -x

12 In the Matter of:

13 EUROPEAN CREDIT MANAGEMENT LIMITED, et al.,

14 Plaintiffs,

15 v. Adv. Pro. No.

16 LEHMAN COMMERCIAL PAPER, INC., 09-01262-jmp

17 Defendant.

18 - - - - -x

19 In the Matter of:

20 PULSAR RE LTD.,

21 Plaintiff, Adv. Pro. No.

22 v. 11-01283-jmp

23 LEHMAN BROTHERS HOLDINGS, INC., et al.,

24 Defendants.

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In the Matter of:

PT BANK NEGARA INDONESIA (PERSERO) TBK,

Plaintiff,

Adv. Pro. No.

v.

09-01480-jmp

LEHMAN BROTHERS SPECIAL FINANCING, INC., et al.,

Defendants.

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In the Matter of:

KING,

Plaintiff,

Adv. Pro. No.

v.

11-01875-jmp

LEHMAN BROTHERS HOLDINGS, INC., et al.,

Defendants.

- - - - -x

U.S. Bankruptcy Court

One Bowling Green

New York, New York

July 20, 2011

2:03 PM

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2 B E F O R E:

3 HON. JAMES M. PECK

4 U.S. BANKRUPTCY JUDGE

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PRE-TRIAL Conference (Adv. 09-01262)

PRE-TRIAL Conference (Adv. 11-01283)

PRE-TRIAL Conference (Adv. 09-01480)

PRE-TRIAL Conference and Debtors' Motion to Stay Adversary  
Proceeding (Adv. 11-01875)

Transcribed by: Sara Davis

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P R O C E E D I N G S

THE COURT: Be seated, please. Good afternoon.

First matter is European Credit Management Limited.

MR. LEVINE: Yes, good morning, Your Honor. This is a pre-trial conference. In addition, the debtors have requested permission to move for summary judgment. The good news is that the parties have had discussions -- it's on a little bit of good news. And if Your Honor is agreeable, the plaintiffs have withdrawn their objection to a summ -- to having a summary judgment briefing schedule.

Just as background, this is a case where the plaintiffs were holders of participations under the English forum, which the debtors, throughout these cases, have distinguished from the American version. In the English forum, the participant simply has a debtor-creditor relationship with the partici -- with the grantor here, among the Lehman debtors and did not have an equitable interest in the underlying loan. While the debtors early in this case moved for permission to elevate participations under the U.S. form, the LSTA forum, because that did give participants an equitable interest in the underlying loan, the debtors have not taken the same position with respect to the English version, the LMA version.

And what the plaintiffs here are seeking is specific performance of elevation request, to actually have themselves substituted in as the lender of record pre-petition -- they

1 sent the request in pre-petition. The debtors did not honor  
2 those requests and the issue -- the primary summary judgment  
3 issue is whether, as a matter of English law, an English court  
4 would grant specific performance. We think while the -- not  
5 surprisingly, the competing experts -- legal experts disagree  
6 about what the English court will do, for us, that leaves a  
7 legal issue as to whether or not, should they prove their  
8 breach of contract, they would even be entitled to specific  
9 performance. Because if they're not, then they have a claim  
10 for breach of the participation agreement itself which the  
11 debtors don't dispute and the fact that they did not elevate  
12 does not impact what their damages claim would be.

13 So, either they're entitled to their performance, in  
14 which case they effectively would get 100 cents on the dollar,  
15 or they're not and they would get bankruptcy dollars on the  
16 claim. And we want to, with Your Honor's permission, we will  
17 negotiate a fairly short-term briefing schedule on the summary  
18 judgment motions and go from there.

19 MR. JURELLER: Good afternoon, Your Honor. John  
20 Jureller from Klestadt & Winters. We agree with what Mr.  
21 Levine says, with the opposite opinion, obviously. But after  
22 discussing it today, we met and conferred and we believe that  
23 going forward on the summary judgment may be the way to go  
24 here.

25 The issue that is being brought up is a legal issue.

1 We may, in our opposition, ask the Court as well for summary  
2 judgment. We'll see what they say at this point, but we're  
3 ready to go forward with that as long -- the short briefing  
4 schedule, as well.

5 THE COURT: So, do I understand that you're looking  
6 for permission, should you choose to decide to do this, to  
7 bring your own cross motion for summary judgment?

8 MR. JURELLER: Yes, Your Honor, that would be correct.

9 THE COURT: Okay.

10 MR. LEVINE: We have no opposition, obviously, Your  
11 Honor.

12 THE COURT: I read the letters that you each submitted  
13 on this subject and I think you came to the right result  
14 because I would have permitted the filing of a summary  
15 judgment. So you've reached a good agreement.

16 MR. LEVINE: Thank you, Your Honor.

17 MR. JURELLER: Appreciate it.

18 MR. LEVINE: So we will submit a proposed schedule,  
19 Your Honor?

20 THE COURT: That's fine. I'm not suggesting that this  
21 is going to be an element of the process, but in certain  
22 circumstances in the recent past, I have conducted limited  
23 evidentiary hearings with respect to matters that have been  
24 controverted in summary judgment motions; Bank of America is  
25 one example you may be familiar with. There's another case



1 unrelated to Lehman where I conducted an evidentiary hearing  
2 last May for two days, which is sub judice. I'm not suggesting  
3 that that will be required here, but I'm a little bit concerned  
4 about the conflicting opinions of English legal authorities and  
5 how those conflicts can be addressed simply on papers. Do you  
6 have --

7 MR. LEVINE: No, Your Honor --

8 THE COURT: -- any thoughts --

9 MR. LEVINE: -- that makes perfect sense.

10 THE COURT: -- on that?

11 MR. LEVINE: And, frankly, obviously, both sides will  
12 be, I'm sure, prepared to bring their English law experts to  
13 this courtroom so Your Honor can hear their testimony live and  
14 ask whatever question you have. That's beyond any factual  
15 issues.

16 THE COURT: It's either that or we all go to London.

17 MR. LEVINE: Well, we've done that --

18 MR. JURELLER: We've done London and it's beautiful.

19 MR. LEVINE: And we're happy to go back.

20 THE COURT: I'll bet you are.

21 No, I assume that the experts will come here. And --  
22 if required. And we'll just see where that takes us.

23 What's your current thinking on the schedule that  
24 you're talking about?

25 MR. LEVINE: I think we're talking about having the

1 motions due sometime in September; my associate actually just  
2 left the country because her mother had surgery, so I have to  
3 figure out when she's back and work that around my vacation.  
4 Well, now I think we're talking about the motions being due in  
5 early September. Somewhere around there.

6 MR. JURELLER: Having all the motions complete -- we'd  
7 like to have a hearing if we could, sub pars (sic), at the  
8 latest, towards the end of October, if possible. But we can  
9 sit down and talk about it as timing and see how it fits into  
10 your court calendar.

11 THE COURT: What you're really talking about then is  
12 having oral argument on the motion for summary judgment  
13 following briefing some time in, perhaps, late October?

14 MR. LEVINE: If we can get it done, yes, Your Honor.

15 THE COURT: Fine. I mean, I'm not committing to  
16 October at this moment, but if that's in fact doable and  
17 everything is complete and there's no need for reply briefs and  
18 there's no need to further controvert whatever the opinions are  
19 that are being expressed and we can do this in a relatively  
20 straightforward way, that's fine. But I leave open the  
21 possibility that it may not be as neat as all that.

22 MR. LEVINE: I understand, Your Honor. And since we  
23 just kind of agreed in the last few minutes as to what we  
24 would -- they withdraw -- they would withdraw their objection  
25 to the motion for summary judgment and reserve the right to

1 make their own motion, we haven't really sat down and worked  
2 out the schedule.

3 THE COURT: Fine. And I recognize that it may be that  
4 with the summer and the holidays, that there may be some delays  
5 and that's fine.

6 MR. LEVINE: Thank you, Your Honor.

7 THE COURT: Okay. Thank you.

8 IN UNISON: Thank you, Your Honor.

9 THE COURT: The next one is Pulsar Re.

10 MR. LEVINE: Your Honor, this one is mine, too.

11 Again -- actually, I didn't introduce myself last time. It's  
12 Richard Levine from Weil, Gotshal for the debtors.

13 THE COURT: Mr. McKane, how are you?

14 MR. MCKANE: Very good, Your Honor. It's good to see  
15 you. Mark McKane of Kirkland & Ellis on behalf of Pulsar.

16 MR. LEVINE: Your Honor, this is a status conference  
17 and an adversary proceeding. The plaintiff submitted a letter  
18 to Your Honor Monday afternoon which we have not had an  
19 opportunity to respond to in writing. Just a thumbnail  
20 background on this one, Your Honor. The plaintiffs filed their  
21 complaint in late January, they served it in late February.  
22 The debtors -- it's LBHI and LCPI, filed a motion to dismiss  
23 thirty days later on March 25th. The plaintiffs in response to  
24 the motion to dismiss determined that instead of opposing the  
25 motion to dismiss, they would file an amended complaint seeking

1 to address the issues raised in the motion to dismiss. Shor --  
2 we worked out a briefing schedule on -- or a deadline for the  
3 amended complaint and a briefing schedule which was in a  
4 stipulated order Your Honor approved. Subsequently, the  
5 plaintiffs determined that they wanted to cite certain  
6 documents in their proposed amended complaint -- we haven't  
7 seen the proposed amended complaint, but the one they were  
8 working on which they had obtained in discovery in the Bermuda  
9 proceeding of Lehman Re. And they -- but they were subject to  
10 an applied order of confidentiality in that proceeding and,  
11 again, we agreed to a schedule where their amended complaint  
12 would be due thirty days -- is it thirty or is two weeks -- I  
13 guess it's two weeks after, fourteen days after the Bermuda  
14 court issues its order on their request for relief from this  
15 implied confidentiality obligation. That Bermuda proceeding is  
16 still ongoing. The debtors' position is that the plaintiff  
17 should not be allowed to use discovery they obtained in Bermuda  
18 in order to frame a complaint here. There is currently no  
19 operative complaint; there is -- because of the one we moved to  
20 dismiss against has been effectively withdrawn in favor of a  
21 to-be-filed amended complaint; there's no document request that  
22 has been served; there's no motion before the Court; there's no  
23 application other than the letter of two days ago. In Bermuda,  
24 what happened is that before this application was filed,  
25 Lehman Re had sought from the U.S. debtors various records that

1 had been maintained in New York related to the business of  
2 Lehman Re. Instead of incurring the time and cost to review  
3 the documents, Your Honor, thousands of accounting records, the  
4 debtors and Lehman Re entered into what was effectively a  
5 confidentiality agreement whereby the debtors were able to just  
6 download thousands of documents to Lehman Re under a  
7 confidentiality provision. And these documents included both  
8 documents that only related to the Lehman Re, which Lehman Re  
9 really was entitled to, but it also included financial records  
10 that included information about other debtors, which Lehman Re  
11 had no right to, but the debtors made a determination that it  
12 wasn't worth the expense to the estate to have lawyers or  
13 accountants pore through these documents and redact, you know,  
14 two-thirds of the page that related to other debtors or other  
15 Lehman entities and instead, under this confidentiality  
16 agreement, the documents were just sent down to the joint  
17 provisional liquidators in Bermuda to do what they wanted to  
18 but under a confidentiality agreement and the debtors never  
19 invested time or resources in reviewing these documents.

20 Subsequently, in a Bermuda proceeding, which as I  
21 understand -- Mr. McKane can obviously elaborate, where Pulsar  
22 Re, the plaintiff in this proceeding here in Your Honor's  
23 court, is contesting the use of certain funds by Lehman Re  
24 where the money supposedly went to invest in an acquisition,  
25 Congress Life. Pulsar Re obtained the order of discovery from

1 the Bermuda court which required the joint provisional  
2 liquidators of Lehman Re to produce voluminous documents which  
3 included the documents that had been passed along from the  
4 debtors to Lehman Re. The debtors, once again, had an  
5 opportunity to object to their production in the Bermuda  
6 proceeding, but, again, because it was for purposes of the  
7 Bermuda proceeding, the debtors made a decision that, again,  
8 wasn't worth the debtors' time or expense to do a careful  
9 review and did not object to the production by Lehman Re of the  
10 debtors' documents -- or documents which included debtor  
11 documents to Pulsar Re.

12 Pulsar Re is now seeking to have access to those  
13 documents for use in the instant adversary proceeding from the  
14 Bermuda court. The debtors have taken the position that to the  
15 extent that they're entitled to these documents, whether  
16 they're the documents that originally came from the debtors or  
17 even documents that they've obtained from Lehman Re which were  
18 pure Lehman Re documents, they should have to get them through  
19 the discovery procedures applicable in the U.S., in this Court,  
20 and they should not be -- and they should not be able to use  
21 those documents to try to frame a complaint when they haven't  
22 yet been able to do so.

23 The debtors have, multiple times, asked counsel for  
24 Pulsar Re to itemize exactly what documents they want to use in  
25 the amended complaint on the theory that it may turn out that

1 we don't really care and why go through the big fuss, but  
2 they've declined to do so on the theory that they want to be  
3 able -- it's not just the documents that they might use and I  
4 would guess it's only a handful for purposes of a complaint,  
5 that they want to have free access to these documents  
6 throughout the litigation and therefore they're unwilling to  
7 give us a list. And we've asked for that here in the U.S., our  
8 Bermuda counsel's asked their Bermuda counsel for it and  
9 counsel for Lehman Re has asked them for the list, and they've  
10 declined to give it. So that issue is still being litigated  
11 before the Bermuda court.

12 They've now asked Your Honor by the letter of two days  
13 ago to order us to simply turn over, in the absence of any  
14 discovery request, in the absence of an operative complaint,  
15 the three CDs of documents the debtors originally provided to  
16 Lehman Re and they want short term discovery getting started,  
17 even though we haven't yet even seen an amended complaint.

18 Just to give a little context, as we understand Pulsar  
19 Re's claim, it's that Pulsar Re entered into a contract with  
20 Lehman Re, not any of the U.S. debtors, to re-insure some of  
21 Lehman Re's insurance obligations. there was a separate  
22 contract pursuant to whi -- again, which none of the debtors  
23 were parties to; this is a contract between Pulsar Re, Lehman  
24 re and LBI, pursuant to which any monies that Pulsar Re had to  
25 advance to Lehman Re as collateral for Pulsar Re's reinsurance

1 obligations were to be held in a segregated account by -- at  
2 LBI.

3 The claim is that Lehman Re, not any debtor, breached  
4 those contracts by instead of depositing the funds in a  
5 segregated or custodial account with LBI, used them to invest  
6 in repurchase -- purchase agreements with U.S. debtor. And  
7 they're claiming that the securities that were sold under the  
8 repurchase agreement by the U.S. debtors back to Lehman Re were  
9 not worth what they should have been and then there's a  
10 shortfall. And so they're seeking to have a constructive trust  
11 imposed over the monies that Lehman Re invested with the U.S.  
12 debtors under the repurchase agreements.

13 We have bunches of issues with this. Number one, the  
14 same claim, the assertion that the U.S. debtors owe monies back  
15 to Lehman Re because the securities that were provided under  
16 the repurchase agreement were to not have sufficient value,  
17 there's a claim that's being pursued by Lehman Re. I mean,  
18 this is a contract between Lehman Re and the U.S. debtors where  
19 a claim has been filed by Lehman Re and the debtors and Lehman  
20 Re, which is obviously under a separate reorganization  
21 proceeding or liquidation proceeding under -- in Bermuda, on  
22 being under the control of joint provisional liquidators who  
23 are unrelated to the U.S. debtors or Alvarez & Marsal or anyone  
24 here --

25 THE COURT: Well, just so it's clear that you know and



1 it's on the record of this pre-trial. Lehman Re is a Chapter  
2 15 debtor and that case is assigned to me and the --

3 MR. LEVINE: That's right, Your Honor --

4 THE COURT: -- Cadwalader firm --

5 MR. LEVINE: -- and Your Honor entered --

6 THE COURT: -- the Cadwalader firm represents the  
7 joint provisional liquidators here.

8 MR. LEVINE: Sorry?

9 THE COURT: I said on a -- Cadwalader firm --

10 MR. LEVINE: That is correct.

11 THE COURT: -- represents the joint --

12 MR. LEVINE: And Your Honor entered an order --

13 THE COURT: -- provisional --

14 MR. LEVINE: -- recognizing the foreign --

15 THE COURT: -- liquidators.

16 MR. LEVINE: -- main proceeding.

17 THE COURT: Okay.

18 MR. LEVINE: That is correct, Your Honor.

19 So the debtors' position is that to the extent there  
20 is a claim, it belongs to Lehman Re, not to Pulsar Re. The  
21 debtors had no contractual relationship with Pulsar Re and even  
22 if they could allege facts that would, in some other  
23 circumstance, warrant piercing the corporate veil, there's no  
24 need to do that because Lehman Re under its current  
25 organization is pursuing those very claims.

1 We also, obviously, note that constructive trusts are  
2 disfavored in bankruptcy; that they're going to have, we think,  
3 impossible issues of tracing. So --

4 THE COURT: You're not arguing your motion to dismiss,  
5 are you?

6 MR. LEVINE: Well, I am in the sense of what the  
7 plaintiffs are seeking is discovery prior to filing an amended  
8 complaint and we obviously think that one of the considerations  
9 Your Honor might want to take into account is that we think  
10 they're going to have a real hard time framing an amended  
11 complaint that could survive a motion to dismiss.

12 THE COURT: So this is a preemptive second motion to  
13 dismiss the complaint that they haven't been able to frame?

14 MR. LEVINE: Exactly, Your Honor.

15 THE COURT: Got it.

16 MR. MCKANE: It's always nice to have counsel frame  
17 the issue for you, I guess.

18 Your Honor, Mark -- again, for the record, Mark McKane  
19 of Kirkland & Ellis on behalf of Pulsar Re. We sent in a  
20 letter to your chambers on Monday to frame two issues for this  
21 case management, Your Honor. One is a use issue. The other is  
22 a confirmation procedure. Given the prelude and framing that  
23 debtors' counsel brought up, I'd like to explain the case from  
24 our perspective. I -- one thing I would note that is important  
25 is the timing and the time line here. Because we did file a

1 complaint over five months. It has not been withdrawn. In an  
2 effort to move the case forward, we agreed to amend to address  
3 the Twombly-type arguments that are being raised by the -- this  
4 alleged insufficiency of the specificity of the allegations.  
5 but it absolutely has been not -- absolutely not been  
6 withdrawn. There is an operative complaint in this case and  
7 that's why we're here on a case management conference.

8 But what is the case? It is not a restatement of the  
9 Lehman Re cause of action.

10 THE COURT: let me break in and ask you a question.

11 MR. MCKANE: Yes.

12 THE COURT: I read your letter and I also read the  
13 attachment which was a declaration out of the London office of  
14 Sidley & Austin.

15 MR. MCKANE: Right.

16 THE COURT: Why are you not briefing and arguing the  
17 original motion to dismiss? That's question one.

18 MR. MCKANE: Sure.

19 THE COURT: And question two, why are you entitled to  
20 any discovery to assist in framing an emended complaint if  
21 that's what you're seeking to do?

22 MR. MCKANE: All right, let me address the second  
23 issue first. All right. We're not seeking discovery because  
24 we already have the disks. We're see -- the disks have been  
25 provided. The disks that we're discussing today have been

1 provided by Lehman Re in discovery in a Lehman Re proceeding  
2 down in Bermuda --

3 THE COURT: Let me stop you for a second.

4 MR. MCKANE: Sure, go ahead.

5 THE COURT: If you have the disks and you have the  
6 documents, then the only issue becomes your freedom without  
7 violating in part confidentiality in Bermuda to use those  
8 documents. Have you prepared, on the basis of the documents  
9 that you have already reviewed, an amended complaint?

10 MR. MCKANE: Yes. It is being reviewed now by the  
11 client and the only thing that we are here -- we didn't think  
12 we'd have to raise this in front of Your Honor because we had  
13 hoped that the Bermuda proceeding would be more advanced than  
14 it is right now. The only reason we don't have a ruling from  
15 the Bermuda proceeding was in Bermuda, the judge allowed for  
16 additional time to hear objections from LBHI about the use of  
17 those documents here. At the original hearing, the court was  
18 inclined to grant our limited request and say that Your Honor  
19 could call balls and strikes as to how the documents should be  
20 used in this proceeding given it's your forum. And  
21 unfortunately, because of the delays to allow LBHI to better  
22 flesh out what its arguments may be, the case was -- the  
23 hearing was continued. It's now not scheduled until the end of  
24 August. We wanted to use this opportunity to come forward to  
25 Your Honor and say all we are dealing with now is a use issue.

1 And if the easiest way to cut through that use issue is to have  
2 those same disks that we already have and have already reviewed  
3 and have an amended complaint ready to go, provided again here  
4 in this proceeding, then that just may be the most practical  
5 solution.

6 THE COURT: Well, I -- it's kind of circular because  
7 those disks are effectively black boxes to me. I don't know  
8 what's on them and I don't know what, if any, use you're  
9 actually making of the documents on the disk in connection with  
10 the preparation of your amended complaint. So, it may well be  
11 that the documents in foreign delegations but are not attached  
12 or directly referred to in the amended complaint, in which case  
13 it may be perfectly fair use and being able to demonstrate to  
14 the Bermuda judge it's an appropriate hearing, here's a copy  
15 of an amended complaint we've prepared using some documents, we  
16 didn't attach any copies, we don't believe this file lets any  
17 implied confidentiality, out of an abundance of caution, we  
18 seek your permission to use this form of amended complaint in  
19 New York. Any problem, Judge? And the judge will either say  
20 yes or no.

21 MR. MCKANE: Your Honor, it's a little more than that  
22 in this regard. In the Bermuda proceeding, when Lehman Re  
23 turned over the documents to us, all the U.S. debtors, all the  
24 debtors, had an opportunity to object. None of them objected  
25 to that at that time, so LBHI and LCPI, the defendants in this

1 case, did not object to turning them over to Pulsar. Knowing  
2 what they know now, with all the allegations that they make now  
3 which -- it's too burdensome to review them, these aren't mass  
4 immaterials (sic).

5 The amended complaint, as drafted, it definitely  
6 informs the allegations. it is the -- but there're also  
7 specific references to communications between LBHI personnel  
8 and Lehman Re personnel about our property, our collateral and  
9 how it was taken out of Lehman Re, through a reverse repo,  
10 about which we are not a party, and how it was then ushered up  
11 to New York to address the liquidity concerns and issues that  
12 the Lehman overall, global Lehman, was facing in 2008. We had  
13 450 million dollars of available liquidity and what we've been  
14 able to determine through the production that we received in  
15 Lehman Re as we are proceeding parallel actions in Bermuda and  
16 in New York to recover our property was that there was an  
17 aggressive effort to get our cash, our collateral out of  
18 Bermuda and into New York to address the liquidity crisis. And  
19 we wanted, in the amended complaint, not just in form, as to  
20 why we think a constructive trust is appropriate, but we do  
21 quote in the amended complaint in its current form, those  
22 proceedings.

23 The reason why we didn't want to come forward and just  
24 say here's the handful of documents we intend to use here is,  
25 the one thing we've learned about Bermuda proceedings, is they

1 take a lot of time. And we don't want to be in a situation  
2 where we have to go back to Bermuda at every stage where we  
3 want to make reference to a document that was previously turned  
4 over as part of the Lehman Re proceedings. We just want to get  
5 confirmation for use of that contained, you know, set of  
6 materials that LBHI had turned over and did not object to  
7 providing us in the first places --

8 THE COURT: I don't see --

9 MR. MCKANE: -- so we could use them here.

10 THE COURT: Mr. McKane, I don't see how you can  
11 shorthand that process here. It seems to me that the issue  
12 that confronts you, if I understand it correctly, is the  
13 avoidance of potential liability or sanctions in the Bermuda  
14 proceeding as a result of the improper use of materials that  
15 were turned over to you in a particular context. And it seems  
16 ot me that since that context was the Bermuda proceeding, the  
17 only place where you can get comfort is Bermuda. if what you  
18 are seeking here is some kind of workaround in which I will  
19 provide you the functional equivalent of the very same  
20 documents you've already seen by saying it's as if they've been  
21 turned over in this proceeding, I am not aware of any procedure  
22 that would allow me to do that, nor do I think it would be  
23 appropriate for me to do it.

24 There is already pending, as I understand it, a  
25 proceeding which has been listed for hearing in August in the

1 Bermuda court and I have no intention of undermining the  
2 authority of that proceeding or that court or giving you what  
3 amounts to the comfort that you seek here through a separate  
4 means.

5 MR. MCKANE: And Your Honor --

6 THE COURT: Do I misunderstand this?

7 MR. MCKANE: Well, a couple things. We're not asking  
8 for a special workaround or a comfort ladder or anything along  
9 those lines.

10 THE COURT: Aren't you asking me to say that it's  
11 perfectly fine for the debtor to in effect turn over the same  
12 documents to you here so that you're getting what amounts to a  
13 second set of the very same documents? Thereby giving you the  
14 ability to say hey, we're not using your documents, we're doing  
15 a duplicate set in New York.

16 MR. MCKANE: Your Honor, we are asking for the same  
17 disk, but this is a -- the initial case -- you asked for what  
18 authority you have to allow for this type of proceeding to go  
19 forward. This is just discovery in an adversary proceeding  
20 under Rule 26 --

21 THE COURT: This isn't exactly discovery in an  
22 adversary proceeding. Procedurally we are at the -- we haven't  
23 yet got a complaint stage. We're at the -- the complaint has  
24 been filed, a motion to dismiss has been lodged with respect to  
25 that complaint. I understand -- unless you want to correct the



1 record -- that there was a decision made by your firm as  
2 counsel for the plaintiff here not to fight the motion to  
3 dismiss, but rather to file an amended complaint in response to  
4 the motion to dismiss. And we're really fussing with the form  
5 of that amended complaint and whether or not you have authority  
6 to file it in its present form, given that it is something  
7 based on documents that you obtained in another context in  
8 Bermuda.

9 I think I understand the setting, but to say that this  
10 is something that's just governed by discovery rules is to  
11 whitewash it. This is, in effect, discovery in aid of your  
12 ability to file an amended complaint. And you already have a  
13 proceeding in place in Bermuda to obtain permission.

14 MR. MCKANE: I understand the Court's direction, and I  
15 understand the message that you giving me. I simply wanted to  
16 spell out that we weren't asking for something untoward or  
17 inappropriate. In an initial case management conference when  
18 you have the ability under Rule 26(f) to allow discovery to go  
19 forward here, we thought this might be the easiest way to  
20 advance the case forward. That's the only reason we're here  
21 today is --

22 THE COURT: Okay.

23 MR. MCKANE: -- we're in a situation where we want to  
24 advance the case forward, and if the clear message --

25 THE COURT: Let me then make it absolutely clear. The

1 answer is no.

2 MR. MCKANE: Understood. If the clear message of this  
3 Court is I'll see you when you're done with Bermuda --

4 THE COURT: Right.

5 MR. MCKANE: -- we understand that, and I look forward  
6 to seeing you in the fall.

7 THE COURT: Okay. Have fun in Bermuda.

8 MR. MCKANE: Thank you.

9 MR. LEVINE: Thank you, Your Honor.

10 Your Honor, it's my understanding -- unless someone  
11 corrects me -- that the next item on the agenda has been  
12 adjourned, PT Bank Negara Indonesia v. Lehman Brothers Special  
13 Financing matter. Raise up -- Metavante (ph.) has been  
14 adjourned --

15 THE COURT: I was told that one had been adjourned as  
16 well.

17 MR. LEVINE: Okay. So my colleague Zaw Win is going  
18 to represent the debtors with respect to item number 11 on the  
19 agenda.

20 MR. WIN: Good afternoon, Your Honor. Zaw Win, Weil,  
21 Gotshal & Manges on behalf of the debtors.

22 The last item on the agenda today is the adversary  
23 proceeding King v. Lehman Brothers Holdings Inc., case number  
24 11-01875. This is a status conference and also the debtors  
25 have a motion on file to stay the adversary proceeding.

1 THE COURT: Is Melissa King present in court or is she  
2 present on the telephone? Apparently she's not present. Did  
3 she have actual notice of today's status conference?

4 MR. WIN: We sent the agenda to the address that she  
5 had listed on her pleadings. Subsequently, we saw a pleading  
6 that she filed in her bankruptcy in Georgia listing a different  
7 address.

8 THE COURT: I saw a Pasadena, California address on  
9 one of the pleadings.

10 MR. WIN: Yes. So we provided the notice to the  
11 Georgia address; that was the only address that we had when we  
12 sent the notice out, but it's possible that if she has already  
13 moved, she has not -- she did not receive actual notice.

14 THE COURT: All right, I've read the papers here and  
15 I'm familiar with the issue. Can you at least give me a report  
16 as to what happened in the Atlanta Bankruptcy Court on July  
17 6th?

18 MR. WIN: Sure. We understand from local counsel that  
19 the court made a bench ruling approving our motion for relief  
20 from the automatic stay, but that court has not actually  
21 entered the order yet, so we're waiting to see the form of the  
22 order that that court actually enters.

23 And we further understand from local counsel that that  
24 court entered an -- or dismissed her Chapter 13 case, but  
25 again, we haven't seen an actual order that was entered in that

1 case dismissing it. So in some ways, we're sort of in limbo,  
2 waiting for that court to enter its orders before we can  
3 determine what the appropriate next steps are.

4 THE COURT: Okay, that means we're in limbo, too. My  
5 understanding of what's going on here is that the plaintiff,  
6 Melissa King, acting pro se, has brought an adversary  
7 proceeding here against Lehman Brothers Holding Inc. in its  
8 capacity as the purchaser of her home at a foreclosure sale,  
9 that there has been extensive litigation both in the federal  
10 district court and in the State Court of Cobb County, Georgia,  
11 with respect to LBHI's entitlement to possession of that  
12 property and that Melissa King filed a Chapter 13 petition in  
13 Atlanta, commencing her own personal bankruptcy case there.  
14 The motion for relief from automatic stay that we've just been  
15 talking about was filed there.

16 I accept your representation that you've been at least  
17 reliably informed by your local counsel that that motion is  
18 being granted, it's just that we don't have the order yet.

19 MR. WIN: That's correct.

20 THE COURT: Since your motion to stay was predicated  
21 upon the procedural complexity of the current situation and the  
22 potential prejudice to LBHI in having to respond to the  
23 complaint that has been filed against LBHI here, I'm prepared  
24 to grant your stay even without Melissa King's being present,  
25 without prejudice to her seeking relief from that stay or

1 coming forward with cause that she might be able to show as to  
2 why an answer to the complaint should be filed. But since  
3 she's not here to express her point of view, I'm going to have  
4 to leave it to you to be in contact with her, assuming you can  
5 find her. I am guessing that with so much going on in the  
6 Atlanta bankruptcy case that she commenced, that someone is  
7 going to be reaching out to her concerning that status,  
8 especially if the case is being dismissed.

9 Let me ask you this additional question. Ordinarily,  
10 Chapter 13 petitions are not dismissed sua sponte by a  
11 bankruptcy court. Was there, to your knowledge, a motion to  
12 dismiss her Chapter 13 case for some reason?

13 MR. WIN: I don't understand that Lehman's local  
14 counsel filed that motion, but it's possible that the Chapter  
15 13 may have moved for that relief, but I'm not entirely  
16 certain. I only know certainly that Lehman filed the motion  
17 for relief from the automatic stay.

18 THE COURT: But not a motion to dismiss.

19 MR. WIN: I'm not aware of that, but it's possible  
20 that Lehman's local counsel did file that motion.

21 THE COURT: All right. To the extent that what this  
22 is really about is protecting the record of the adversary  
23 proceeding in which Melissa King has sued Lehman Brothers  
24 Holding Inc. and making it clear that no default judgment or  
25 other relief adverse to Lehman Brothers Holding Inc. will be

1 entered here, I can confirm that that's not going to happen.  
2 What the right timeline is for the case is something that  
3 remains open. I don't think it's fair for this case to simply  
4 be stayed indefinitely. And in other settings similar to this,  
5 LBHI has motions to dismiss that haven't produced outcomes, but  
6 motions to dismiss have been filed, and it seems to me that it  
7 would be a good idea for this case not to be in permanent  
8 limbo.

9 MR. WIN: Understood. And all we've requested is  
10 thirty days from entry of a final order determining our motion  
11 for relief from the automatic stay in that case. So assuming  
12 that that motion is entered in the next week or so, we would be  
13 asking for thirty days from that date in order to file our  
14 motion to dismiss.

15 THE COURT: That's fine. And while that's going on,  
16 I'm just going to ask you to use your reasonable best efforts  
17 to try to make contact with the plaintiff and provide some  
18 actual notice as to what's going on here.

19 MR. WIN: Of course.

20 THE COURT: And if, in fact, the residential real  
21 property that is the subject of this litigation ultimately is  
22 taken through nonbankruptcy proceedings under Georgia law, it  
23 is conceivable that the plaintiff may decide that there is no  
24 purpose to be served in continuing this litigation. If that's  
25 true and you're able to obtain voluntary dismissal, that would

1 be very efficient.

2 MR. WIN: Okay, thank you, Your Honor.

3 THE COURT: Okay. Thank you. There's nothing more  
4 for this afternoon. We're adjourned.

5 (Whereupon these proceedings were concluded at 2:41 PM)

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I N D E X

RULINGS

	Page	Line
Pulsar Re motion denied	25	1
Stay granted	27	24



C E R T I F I C A T I O N

I, Sara Davis, certify that the foregoing transcript is a true  
and accurate record of the proceedings.

Sara Davis

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